

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 28

Introduced by Connealy, 16; Baker, 44; Bourne, 8; Cornett, 45;
Foley, 29; Kruse, 13; Dw. Pedersen, 39; Price, 26;
Synowiecki, 7; Wehrbein, 2; Aguilar, 35; Byars, 30;
Cunningham, 40; McDonald, 41; Schimek, 27;
Thompson, 14

Read first time January 6, 2005

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend section
2 77-2701, Revised Statutes Supplement, 2004; to provide an
3 income tax credit for certain charitable contributions;
4 to provide a termination date; to create a commission; to
5 provide operative dates; and to repeal the original
6 section.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-2701, Revised Statutes Supplement,
2 2004, is amended to read:

3 77-2701. Sections 77-2701 to 77-27,135.01 and 77-27,222
4 and sections 2 to 8 of this act shall be known and may be cited as
5 the Nebraska Revenue Act of 1967.

6 Sec. 2. (1) For purposes of sections 2 to 8 of this act,
7 subject to subsection (2) of this section, planned gift means an
8 irrevocable contribution to a qualified endowment when the
9 contribution uses any of the following techniques authorized under
10 the Internal Revenue Code of 1986, as amended:

11 (a) Charitable remainder unitrusts, as defined by section
12 664(d)(2) of the code;

13 (b) Charitable remainder annuity trusts, as defined by
14 section 664(d)(1) of the code;

15 (c) Pooled income fund trusts, as defined by section
16 642(c)(5) of the code;

17 (d) Charitable lead unitrusts qualifying under section
18 170(f)(2)(B) of the code;

19 (e) Charitable lead annuity trusts qualifying under
20 section 170(f)(2)(B) of the code;

21 (f) Charitable gift annuities undertaken pursuant to
22 section 1011(b) of the code;

23 (g) Deferred charitable gift annuities undertaken
24 pursuant to section 1011(b) of the code;

25 (h) Charitable life estate agreements qualifying under
26 section 170(f)(3)(B) of the code; or

27 (i) Paid-up life insurance policies qualifying as a
28 deduction under section 170 of the code.

1 (2) (a) A contribution using a technique described in
2 subdivision (1) (a) or (1) (b) of this section is not a planned gift
3 unless the trust agreement provides that the trust cannot terminate
4 and the beneficiaries' interest in the trust cannot be assigned or
5 contributed to the qualified endowment sooner than the earlier of:

6 (i) The date of death of the beneficiaries; or

7 (ii) Five years after the date of the contribution.

8 (b) A contribution using the technique described in
9 subdivision (1) (g) of this section is not a planned gift unless the
10 payment of the annuity is required to begin within the life
11 expectancy of the annuitant or of the joint life expectancies of
12 the annuitants, if more than one annuitant, as determined using the
13 actuarial tables adopted by the Department of Revenue in effect on
14 the date of the contribution. The department may adopt and
15 promulgate rules and regulations adopting life expectancy tables
16 that are derived from the actuarial tables contained in the
17 publications of the Internal Revenue Service.

18 (c) A contribution using a technique described in
19 subdivision (1) (f) or (1) (g) of this section is not a planned gift
20 unless the annuity agreement provides that the interest of the
21 annuitant or annuitants in the gift annuity cannot be assigned to
22 the qualified endowment sooner than the earlier of:

23 (i) The date of death of the annuitant or annuitants; or

24 (ii) Five years after the date of the contribution.

25 (d) A contribution using a technique described in
26 subdivision (1) (f) or (1) (g) of this section is not a planned gift
27 unless the annuity is a qualified charitable gift annuity as
28 defined in section 59-1802.

1 Sec. 3. For purposes of sections 2 to 8 of this act,
2 qualified endowment means a permanent, irrevocable fund that is
3 held by a Nebraska incorporated or established organization that:

4 (1) Is a tax-exempt organization under section 501(c)(3)
5 of the Internal Revenue Code of 1986, as amended; or

6 (2) Is a bank or trust company that is holding the fund
7 on behalf of a tax-exempt organization.

8 Sec. 4. (1) A resident individual shall be allowed a
9 credit against the income tax due under the Nebraska Revenue Act of
10 1967 in an amount equal to forty percent of the present value of
11 the aggregate amount of the charitable gift portion of a planned
12 gift made by the individual during the tax year to any qualified
13 endowment. The maximum credit per individual per tax year is ten
14 thousand dollars. The credit allowed under this section shall not
15 exceed the taxpayer's income tax liability.

16 (2) The credit allowed under this section cannot be
17 claimed to the extent that the taxpayer has included the
18 contribution upon which the amount of the credit was computed as a
19 deduction on his or her state income tax return.

20 (3) The credit cannot be carried back or forward, and the
21 credit shall be applied to the tax year in which the planned gift
22 is made.

23 Sec. 5. A contribution to a qualified endowment by a
24 small business corporation, partnership, or limited liability
25 company carrying on any trade or business for which deductions
26 would be allowed under section 162 of the Internal Revenue Code or
27 carrying on any rental activity qualifies for the credit provided
28 in section 4 of this act. The credit shall be attributed to

1 shareholders, partners, or members in the same proportion used to
2 report the corporation's, partnership's, or limited liability
3 company's income or loss for income tax purposes. The maximum
4 credit per shareholder, partner, or member per tax year is ten
5 thousand dollars, subject to the limitation in subsection (2) of
6 section 4 of this act. The credit allowed under this section may
7 not exceed the taxpayer's income tax liability. The credit cannot
8 be carried back or forward, and the credit shall be applied to the
9 tax year in which the contribution is made.

10 Sec. 6. A corporation shall be allowed a credit against
11 the income tax due under the Nebraska Revenue Act of 1967 in an
12 amount equal to twenty percent of any contribution made by the
13 corporation to a qualified endowment. The maximum credit that may
14 be claimed by a corporation for contributions made per tax year
15 under this section is ten thousand dollars. The credit allowed
16 under this section shall not exceed the taxpayer's income tax
17 liability. The credit allowed under this section cannot be claimed
18 to the extent that the taxpayer has included the contribution upon
19 which the amount of the credit was computed as a deduction on its
20 state income tax return. The credit cannot be carried back or
21 forward, and the credit shall be applied to the tax year in which
22 the contribution is made.

23 Sec. 7. A contribution to a qualified endowment by a
24 resident estate or trust qualifies for the credit provided in
25 section 4 of this act if the contribution is a planned gift or in
26 section 6 of this act if the contribution is an outright gift to a
27 qualified endowment. Any credit not used by the estate or trust
28 may be attributed to each beneficiary of the estate or trust in the

1 same proportion used to report the beneficiary's income from the
2 estate or trust for Nebraska income tax purposes. The maximum
3 credit per beneficiary is ten thousand dollars, subject to the
4 limitation in subsection (2) of section 4 of this act, and the
5 credit can only be claimed in the tax year in which the
6 contribution is made. The credit cannot be carried back or
7 forward.

8 Sec. 8. Sections 2 to 7 of this act terminate for
9 taxable years beginning or deemed to begin on or after January 1,
10 2010, under the Internal Revenue Code of 1986, as amended.

11 Sec. 9. (1) The Commission on Endowed Giving is created.
12 The commission shall promote planned giving to Nebraska endowments.

13 (2) The commission shall have six members appointed by
14 the Governor. The Governor shall appoint two members from each
15 congressional district. Members shall be reimbursed for their
16 actual and necessary expenses as provided in sections 81-1174 to
17 81-1177.

18 (3) For administrative purposes the commission shall be
19 located in the Department of Revenue. The department shall provide
20 administrative support to the commission. The Legislature shall
21 appropriate \$250,000 for purposes of this section of which not more
22 than \$12,500 may be used for administrative costs of the
23 department.

24 (4) The commission and this section terminate on October
25 1, 2007.

26 Sec. 10. Sections 1 to 8 and 11 of this act become
27 operative for taxable years beginning or deemed to begin on or
28 after January 1, 2006, under the Internal Revenue Code of 1986, as

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1 amended. The other sections of this act become operative on their
2 effective date.

3 Sec. 11. Original section 77-2701, Revised Statutes
4 Supplement, 2004, is repealed.